

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

Summary Minutes – February 22, 2023

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

| Committee members | Present | Excused | Guests/Staff Present |
|----------------------------------|----------------|----------------|-------------------------------------|
| Rod N. Andreason | X | | Stacy Haacke, Staff |
| Lauren DiFrancesco, Chair | X | | Crystal Powell, Recording Secretary |
| Judge Kent Holmberg | | X | Jace Willard, Staff |
| James Hunnicutt | X | | |
| Trevor Lee | X | | |
| Ash McMurray | X | | |
| Kim Neville | | X | |
| Timothy Pack | X | | |
| Loni Page | X | | |
| Bryan Pattison | X | | |
| Judge Laura Scott | X | | |
| Judge Clay Stucki | X | | |
| Judge Andrew H. Stone | X | | |
| Justin T. Toth | X | | |
| Susan Vogel | X | | |
| Tonya Wright | X | | |
| Judge Rita Cornish | X | | |
| Vacant Commissioner Seat | | | |
| Vacant Academic Seat | | | |
| Vacant Academic Seat | | | |
| Vacant Self-Rep Perspective Seat | | | |
| Vacant Self-Rep Perspective Seat | | | |
| 2 <i>Emeritus</i> Seats Vacant | | | |

(1) INTRODUCTIONS

The meeting started at 4:00 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests. Ms. DiFrancesco also announced that two new Committee members will be joining to fill the commissioner and attorney posts that are vacant. She also reminded the Committee that the meeting will be hybrid of in person and remote beginning in March 2023.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the January Minutes subject to amendments noted by the Minutes subcommittee. Ms. Susan Vogel moved to adopt the Minutes as amended. Mr. Jim Hunnicutt seconded. The Minutes were unanimously approved.

(3) RULE 59. PUBLIC COMMENTS (ALTERING OR AMENDING A JUDGMENT)

Ms. DiFrancesco reported that there were no public comments. The Committee referred the Rule to the Supreme Court for approval. Mr. Hunnicutt raised the motion. Mr. Justin Toth seconded. The motion was approved by all.

(4) RULE 45 (e). PROTECTION OF PERSONS SUBJECT TO SUBPOENAS; OBJECTION

Ms. DiFrancesco reported that this rule change contemplates making it clear that a non-party affected by a subpoena can either serve an objection or a file a motion under Rule 37. If they serve an objection, subsection (5) applies and the party is not entitled to compliance, and they have to request an order compelling compliance under Rule 37 (a). Ms. Di Francesco noted that the draft language sounds a little odd and invited the Committee to suggest better language.

Ms. Vogel raised her non preference for the word “quash” but Ms. DiFrancesco noted that at this point the word can’t be removed as it is used in many places in the rules and invited the plain language subcommittee to bring a proposal on abolishing the word “quash” from the rules of civil procedure. Mr. Justin Toth clarified that a motion to quash only applies to fighting a subpoena. He also offered that even if Rule 45 says that a motion to quash has to be filed under Rule 37, Rule 37 is as statement of discovery issues and so the language should not be a motion to quash. Ms. Vogel expressed that it should be easy to object to a subpoena without having to file a statement of discovery issues under Rule 37. Ms. Di Francesco agreed and reminded the Committee that the Rule amendment is to accomplish that goal. The Committee discussed various draft language and the effect on parties and non-parties in not creating confusion. The Committee settled on the language “The person subject to the subpoena or a non-party affected by the subpoena may serve an objection.” Mr. Toth moved to adopt that language. Judge Cornish seconded. The amendment passed unanimously.

(5) RULE 12(A)(1). DEFENSES AND OBJECTIONS.

Ms. Loni Page presented on the proposed amendments. The Supreme Court questioned whether it would lead to more defaults if it were not clarified that the answer must also be filed in addition to being served. The Committee discussed the proposed language changes and the history behind the use of the word “file” vs. “file and serve.” The Committee discussed if other rules also need to be amended to make the language consistent. Judge Stone expressed that the language should be clear on the expectation of parties. Mr. Andreason also agreed that at times redundant language may be needed for the sake of greater clarity. Judge Stucki moved to adopt the language “file and serve.” Ms. Vogel seconded. The motion passed unanimously.

The Committee discussed the inclusion of a table that summarizes the deadlines. Mr. Toth suggested that the inclusion of the table to postponed.

(6) RULE 26.1(h). NOTICE REQUIREMENTS.

Ms. Page presented the amended language for the notice requirements. The Committee discussed the comments from the Supreme Court that the Rule should clarify that disclosures are only required if the responsible party files an answer or otherwise disagrees with the petition. The

subcommittee will continue working on the proposed amendments and did not settle on any changes at this time.

(7) RULE 104. DIVORCE DECREE UPON AFFIDAVIT.

Ms. Page presented on the proposed amendments and discussed the comments from the Supreme Court that the Rule creates duplication of work and more confusion in divorce actions. The Supreme Court suggested repealing the Rule or clarifying that a sworn pleading or declaration can suffice for the affidavit mentioned in the Rule. The Committee discussed their concerns regarding changing “affidavit” to “declaration” as it might lead to variance with other parts of the Rules. The Committee also discussed whether the Rule should be repealed and the reasons for and against. Judge Stone reiterated his concern from previous meetings that it is important to have the sworn affidavit the decree findings are consistent with what was served on the other party. Ms. Vogel suggested that the Committee working on the Rule more. Ms. DiFrancesco agreed that tabling the issue would also allow a subcommittee to be formed to look at other places in the rule where a sworn pleading may suffice for a declaration. The subcommittee will continue working on the amendment.

(8) RULE 6. COMPUTING TIME. LEGAL HOLIDAYS. JUNETEENTH.

Ms. Di Francesco, presented on the amendments to the court legal holidays. She reported that for the amendment—although it goes against the normal rules of drafting the Rules—the list of holidays will be removed and a link to the court page on holidays will be included. The Committee discussed their concerns on having a link to a court page in the civil rules to define the legal holidays. Some of those concerns include potential changes to the website, access to the webpage in the print version of the Rules, where the link only works digitally, and the length of the link in print form is clumsy. After some discussion, the Committee suggested to define the holiday as “Juneteenth National Freedom Day (as recognized by the Utah Legislature as the third Monday of June)” so that there is no confusion on when it counts based on the federally designated date. Judge Stucki made a motion to on the proposed new language. Judge Stone seconded. The motion passed unanimously.

(9) RULE 30(b)(6). NOTICE OF SUBPOENA DIRECTED TO AN ORGANIZATION.

Mr. Justin Toth presented on the proposed amendments. He summarized that the issue is deciding if and how the Rule should be amended based on federal amendments. He summarized the differences in the state and federal rules where the federal rules require the parties to meet and confer once a subpoena has been served to depose an organization. He also explained that the federal rule includes a more detailed process for notice compared to the state rule. He relayed that the subcommittee thought it would be particularly helpful to hear the judges’ responses to some of

the questions raised in deciding what amendments to make, based on what the judges are seeing in cases. Some of those questions include whether to have a meet and confer requirement; the timing of the meet and confer; timing of service of notice of deposition; the procedure and timing for resolving objections under Rule 37; time limitations of the depositions. The Committee discussed the questions in turn and gave their guidance to Mr. Toth's subcommittee to begin drafting language for the Rule. Mr. Toth thanked the Committee for the guidance they provided and will draft the Rule accordingly.

(10) SUBCOMMITTEES. FINALIZING.

Ms. DiFrancesco asked the subcommittees to report on the status of their work and if some subcommittees should be disbanded. Judge Scott reported that her Probate Subcommittee is still needed and will refocus on working on the probate rules now that they have concluded working on tangent issues. Ms. Vogel reported that the Terminology Subcommittee (renamed Plain Language Subcommittee) reported that it will remain active indefinitely. Judge Stone reported that the Records Subcommittee has conclude its work and may be disbanded. Ms. Vogel suggested that the Rule 101 Subcommittee be kept until the Commissioner joins the Committee. The other active subcommittees were also briefly acknowledged. Ms. DiFrancesco also reported that new subcommittees will need to be formed to address pending issues.

(11) ADJOURNMENT.

The meeting adjourned at 6:00 p.m.